

Message Text

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SUBJECT: SUMMONSES TO TWO DIPLOMATIC OFFICERS TO APPEAR
IN ROMANIAN COURT

REF: A) BUCHAREST 182, B) BUCHAREST 215

1. REFTEL A REQUESTED AUTHORIZATION TO IGNORE SUMMONSES ON
GROUND THAT EMBASSY OFFICERS ARE NOT REQUIRED TO APPEAR AND
GIVE EVIDENCE BEFORE LOCAL COURTS. EMBASSY REFERRED TO
ARTICLE 31(2) OF VIENNA DIPLOMATIC RELATIONS CONVENTION.
WHILE DEPARTMENT CONCURS IN EMBASSY'S READING OF THE LAW,
IT SUGGESTS THAT EMBASSY GIVE SERIOUS CONSIDERATION TO
ALLOWING OFFICERS TO GIVE TESTIMONY ON A LIMITED BASIS. REF
B IMPLIED LEANING ON PART OF EMBASSY TO AUTHORIZE COURT
APPEARANCES.

2. FROM FACTS PRESENTED, APPARENT PURPOSE OF REQUESTED
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TESTIMONY IS TO AID PROSECUTION IN ESTABLISHING CASE AGAIN-
ST BURGLARS OF OFFICERS' RESIDENCES. AS SUCH, BOTH GOR AND
EMBASSY OFFICERS WOULD STAND TO BENEFIT. ALTHOUGH IT IS
POSSIBLE THAT APPEARANCE OF OFFICERS IS SOUGHT FOR PURPOSE
OF DELVING INTO UNRELATED AREAS, THIS PROBLEM IS EASILY
REMEDIED. UNLESS EMBASSY PERCEIVES SOME OVERRIDING OBJECT-
IONS NOT REFERRED TO IN REFTELS, DEPARTMENT PROPOSES, AND

HEREBY AUTHORIZES, A LIMITED WAIVER OF DIPLOMATIC IMMUNITY FOR PURPOSE OF ALLOWING OFFICERS TO APPEAR FOR SOLE PURPOSE OF RELATING FACTS WITHIN THEIR KNOWLEDGE RELATING TO ALLEGED BURGLARIES. EMBASSY'S NOTE TO MFA SHOULD EMPLOY THIS OR SIMILAR LANGUAGE AND FURTHER STATE THAT OFFICERS WILL NOT BE AUTHORIZED TO TESTIFY ON UNRELATED MATTERS, NOR IS THEIR IMMUNITY FROM EITHER CRIMINAL OR CIVIL/ ADMINISTRATIVE JURISDICTION BEING WAIVED IN ANY OTHER FASHION OR FOR ANY OTHER PURPOSE. EMBASSY SHOULD BE INSTRUCTED TO DECLINE TO ANSWER ANY QUESTIONS RELATING TO THEIR OFFICIAL ACTIVITIES OR ANY OTHER SUBJECT NOT DIRECTLY RELATED TO THE INSTANT PROCEEDING.

3. DEPARTMENT DOES NOT AGREE THAT AN UNDESIRABLE PRECEDENT WILL BE SET BY FOLLOWING THE SUGGESTED PROCEDURE. (WAIVER OF IMMUNITY IS SOLELY WITHIN THE PROVINCE OF THE SENDING COUNTRY, AND THERE IS NO RELATION BETWEEN AGREEMENT TO WAIVE IN ONE CASE AND A SUBSEQUENT DETERMINATION IN ANOTHER CASE.) ON THE CONTRARY, DEPARTMENT BELIEVES THAT AN UNDESIRABLE PRECEDENT WOULD BE SET IN NOT RPT NOT COOPERATING IN A CASE OF THIS NATURE. FOR YEARS, THE USG HAS BEEN ATTEMPTING, WITH SOME LIMITED SUCCESS, TO PERSUADE SOCIALIST COUNTRIES WITH DIPLOMATIC REPRESENTATION HERE, INCLUDING ROMANIA, TO COOPERATE WITH FEDERAL AND STATE PROSECUTORS, THROUGH FURNISHING OF TESTIMONY, IN AN LIMITED OFFICIAL USE

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EFFORT TO PROSECUTE VIOLENT DEMONSTRATORS AND EVEN PERPETRATORS OF COMMON STREET CRIMES. ROMANIAN MISSIONS HERE HAVE BEEN PARTICULARLY STRIDENT IN THEIR CRITICISM OF ACTIONS TAKEN BY LAW ENFORCEMENT AGENCIES IN CURBING DISRUPTIVE ACTIONS AGAINST ROMANIAN MISSIONS AND OFFICIALS. THE CONSISTENT USG RESPONSE IS THAT TESTIMONY OF THOSE INJURED IN SUCH INCIDENTS IS ESSENTIAL TO SUCCESSFUL PROSECUTION. CONSEQUENTLY, AN APPEARANCE OF LACK OF COOPERATION ON THE PART OF THE USG IN SIMILAR CIRCUMSTANCES WOULD BE DETRIMENTAL TO EFFORTS TO IMPROVE THE SITUATION AT THIS END.

4. WITH REFERENCE TO STATEMENT CONTAINED REF B RELATING TO LACK OF NEED FOR FORMAL WAIVER, DEPARTMENT'S POSITION IS THAT FORMAL WAIVER IS HIGHLY DESIRABLE TO AVOID ANY QUESTION AS TO SCOPE OF WAIVER AND, THUS, TO ESTABLISH BASIS FOR OBJECTING TO QUESTIONS RAISED DURING PROCEEDING WHICH ARE UNRELATED TO SUBJECT OF THE FORMAL INQUIRY. CHRISTOPHER

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